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15SL-AC02426 - DEBRA A COLBERT V LVNV FUNDING LLC (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/ Execution
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02/10/2015
Corporation Served

Document ID - 15-ASOS-85; Served To - LVNV FUNDING LLC; Server - ; Served Date - 30-JAN-15; Served Time - 00:00:00; Service Type - Special Process Server; Reason Description - Served; Service Text - SERVICE ACCEPTEDBY LASHAWN DEVOS (CLERK)

Notice of Service

Return of Service on Defendant LVNV Funding, LLC.

Filed By: RICHARD ANTHONY VOYTAS Jr.

On Behalf Of: DEBRA A COLBERT

01/29/2015
Summons Issued-Associate

Document ID: 15-ASOS-85, for LVNV FUNDING LLC. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

Hearing Scheduled
Scheduled For: 03/19/2015; 9:00 AM ; PATRICK CLIFFORD; St Louis County

01/22/2015
Filing Info Sheet eFiling
Filed By: RICHARD ANTHONY VOYTAS Jr.

Pet Filed in Associate Ct

Petition.

Note to Clerk eFiling

Code APTAC for summons

Filed By: RICHARD ANTHONY VOYTAS Jr.

Summ Req-Assc Pers Serv

Plaintiff s Request for Appointment of Special Process Server.

Filed By: RICHARD ANTHONY VOYTAS Jr.

On Behalf Of: DEBRA A COLBERT

Judge Assigned

DIVISION 39 THURSDAY



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: PATRICK CLIFFORD	Case Number: 15SL-AC02426
Plaintiff/Petitioner: DEBRA A COLBERT	Plaintiff's/Petitioner's Attorney/Address or Pro Se's Address/Telephone Number: RICHARD ANTHONY VOYTAS Jr. 1 NORTH TAYLOR AVENUE SAINT LOUIS, MO 63108 (314) 932-1068
Defendant/Respondent: LVNV FUNDING LLC	
Nature of Suit: AC Other Tort	Date, Time and Location of Court Appearance: 19-MAR-2015 09:00 AM DIVISION 39H ST LOUIS COUNTY COURT BUILDING 7900 CARONDELET AVE CLAYTON, MO 63105

(Date File Stamp)

Summons for Personal Service Outside the State of Missouri (Associate Division Cases)

The State of Missouri to: LVNV FUNDING LLC

ILLINOIS CORP. SERVICE CO
801 ADLAI STEVENSON DRIVE
SPRINGFIELD, IL 62703

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this Circuit Court, Associate Division on the date, time and location above, to answer the allegation in the petition filed by the above-named Plaintiff/Petitioner, a copy of which is attached. If you fail to appear at the time and place stated in this summons, judgment by default will be taken against you for the relief demanded in the petition.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739 or TTY at 314-615-4567, at least three business days in advance of the court proceeding.

01-29-2015
Date

Further Information:
AKA

James P. Hilmy
Signature of Plaintiff/Petitioner

Officer's or Server's Affidavit of Service
Note to serving officer: Service must not be made less than ten days nor more than sixty days from the date the Defendant/Respondent is to appear in court. I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is PRIVATE DETECTIVE of SAWYER County, ILLINOIS (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - ☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to LAISHAWN DOVOIS (name) clerk (title).
 - ☐ other (describe) _____

Served at 801 STEVENSON SPRINGFIELD, IL (address)
in SAWYER County, ILLINOIS (state), on 1-30-15 (date) at 11:26 AM (time).

Philip Caveans
Printed Name of Sheriff or Server

Philip Caveans
Signature of Sheriff or Server

OFFICIAL SEAL

SARAH G. HALL (check one)

Notary Public - State of Illinois

My Commission Expires Oct 22, 2018

(Seal)

- Subscribed and Sworn to before me this 1-30-15 (date).
- ☐ the clerk of the court of which affiant is an officer.
 - ☐ the judge of the court of which affiant is an officer.
 - ☒ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
 - ☐ authorized to administer oaths. (use for court-appointed server)

James P. Hilmy
Signature and Title

Summons Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: PATRICK CLIFFORD	Case Number: 15SL-AC02426
Plaintiff/Petitioner: DEBRA A COLBERT	Plaintiff's/Petitioner's Attorney/Address or Pro Se's Address/Telephone Number: RICHARD ANTHONY VOYTAS Jr. 1 NORTH TAYLOR AVENUE SAINT LOUIS, MO 63108 (314) 932-1068
Defendant/Respondent: LVNV FUNDING LLC	VS.
Nature of Suit: AC Other Tort	Date, Time and Location of Court Appearance: 19-MAR-2015 09:00 AM DIVISION 39H ST LOUIS COUNTY COURT BUILDING 7900 CARONDELET AVE CLAYTON, MO 63105

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01-29-2015
Date

Further Information:
AKA

Officer's or Server's Affidavit of Service

Note to serving officer: Service must not be made less than ten days nor more than sixty days from the date the Defendant/Respondent is to appear in court.

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other (describe) _____.

Served at _____ (address)
in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn to before me this _____ (date).

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Summons Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Clerk

Personal service outside the State of Missouri is permitted only on the conditions set out in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the motion and/or petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion and/or petition may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff/Petitioner has no attorney, Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate field in the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion and/or petition must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion and/or petition when offered to him, the return shall be prepared to show the offer of the officer to deliver the summons and motion and/or petition and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion and/or petition to the individual personally or by leaving a copy of the summons and motion and/or petition at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and motion and/or petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion and/or petition to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion and/or petition to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. On a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory in the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than sixty days from the date the Defendant/Respondent is to appear in court. The return should be made promptly, and in any event so that it will reach the Missouri Court within 30 days after service.

15SL-AC02426

Electronically Filed - St Louis County - January 22, 2015 - 10:39 AM

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI
ASSOCIATE DIVISION

DEBRA A. COLBERT)	
)	
Plaintiff,)	
v.)	CASE NO.
)	
LVNV FUNDING, LLC)	
)	DIVISION
Serve at:)	
Illinois Corporation Service Co.)	
801 Adlai Stevenson Drive)	
Springfield, Illinois 62703)	
)	
Defendants.)	JURY TRIAL DEMANDED

PETITION FOR DAMAGES

COMES NOW, Plaintiff, Debra A. Colbert ("Plaintiff"), and for her Petition for Damages states as follows:

INTRODUCTION

1. This is an action for statutory and actual damages brought by an individual consumer for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

2. Plaintiff demands a trial by jury on all issues so triable.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the FDCPA claims under 15 USC 1692k(d). Venue is appropriate in this Court because Defendant retained Gamache, as set forth below, to conduct illicit collection activity against Plaintiff out of Gamache's office in St. Louis County, Missouri.

PARTIES

4. Plaintiff is a natural person currently residing in Lincoln County, Missouri. Plaintiff is a “consumer” within the meaning of the FDCPA. The alleged debt Plaintiff owes arises out of consumer, family, and household transactions. To the best of Plaintiff’s knowledge, the debt arises from credit card services.

5. Defendant LVNV Funding LLC (“LVNV” or “Defendant”) is a foreign limited liability company with an office in Las Vegas, Nevada.

6. Gamache & Myers, P.C. (“Gamache”) is a domestic professional corporation with an office in St. Louis County, Missouri.

7. The principal business purpose of LVNV and Gamache is the collection of debts in Missouri and nationwide, and LVNV and Gamache regularly attempt to collect debts alleged to be due another.

8. LVNV hired Gamache to collect the alleged debt; at all times relevant, Gamache acted with the authority, knowledge, and consent of LVNV.

9. Defendant LVNV and Gamache are engaged in the collection of debts from consumers using the mail and telephone. Defendant LVNV and Gamache are “debt collectors” as defined by the FDCPA. 15 USC § 1692a(6).

FACTS

10. Defendant’s collection activity of which Plaintiff complains occurred within the previous twelve (12) months, and Defendant’s efforts continue to the time of this Petition.

11. Defendant’s relevant collection activity included purchasing the alleged debt and assigning it to Gamache to conduct a variety of collection efforts against Plaintiff.

12. On April 28, 2014, Gamache, on behalf of LVNV, sent a collection letter to Plaintiff noting that it was in the process of “instituting suit against you.”

13. On May 2, 2014, Gamache filed a lawsuit on behalf of Defendant LVNV against Plaintiff in Lincoln County Associate Circuit Court, Cause No. 14L6-AC00479 (“Collection Suit”).

14. The Collection Suit made, *inter alia*, the following allegations:

- a. That LVNV was the assignee of the original creditor, Springleaf Financial Services, Inc.;
- b. That there was an agreement between Springleaf Financial Services, Inc. and Plaintiff; and
- c. That Springleaf Financial Services, Inc., and subsequently LVNV, made demand for payment of the outstanding sum of \$1,523.09, but the debtor has failed and refused to pay.

15. Defendant LVNV failed to attach an affidavit from the original creditor substantiating their allegations in the Collection Suit; this is not in compliance with the requirements of CACH, LLC v. Askew, 358 S.W.3d 58, 63 (Mo. banc 2012).

16. Defendant did not attach any contract or agreement purportedly existing between the original creditor and Plaintiff to the Collection Suit.

17. Failing to attach the contract between the original creditor and Plaintiff is a violation of Mo. Rev. Stat. § 517.031 and constitutes an unfair collection tactic.

18. Additionally, Defendant failed to attach any records of assignment of Plaintiff’s alleged debt from the original creditor to any subsequent creditors, including LVNV.

19. Defendant sued on Plaintiff's alleged debt without any way to substantiate the balance owed or even confirm that there was indeed a debt in the first place.

20. Defendant came to realize, after many years of suing consumers like Plaintiff, that the vast majority of debtors lacked the resources to come into court to defend Defendant's meritless and unsubstantiated debt collection lawsuits.

21. Defendant lacked (1) valid proof of assignment from Plaintiff's original creditor and any subsequent debt purchasers to LVNV, (2) valid proof that the debt was even owed, and (3) the required contract needed to obtain judgment.

22. Nevertheless, Defendant filed the Collection Suit intending to take advantage of Plaintiff's dire economic circumstances and unsophistication.

23. On June 23, 2014 Plaintiff hired counsel to defend Defendant's baseless lawsuit.

24. Plaintiff engaged in discovery with Defendant and Defendant revealed that it had no evidence upon which to prosecute its baseless suit.

25. Defendant, rather than continue the ruse against Plaintiff, dismissed its suit against Plaintiff on September 26, 2014, moments before trial was about to begin.

26. Defendant knew all along that it could never succeed in trial against Plaintiff because Defendant had no competent evidence that Plaintiff owed the debt.

27. During the entire course of the Collection Suit, Defendant had full knowledge that it lacked the evidence required in Missouri to prove (1) LVNV's standing to sue Plaintiff and (2) the amount and/or validity of the debt.

28. Defendant filed and pursued the Collection Suit while actively and falsely representing to the Court that LVNV had standing and sufficient proof as to the validity and amount of the debt.

29. But for these false representations, Defendant would not have maintained the Collection Suit against Plaintiff to the brink of trial and forced Plaintiff to incur attorneys' fees to defend against a meritless legal action.

30. Plaintiff never agreed to arbitrate any disputes with Defendant.

31. Defendant's conduct has caused Plaintiff to suffer actual damages including but not limited to substantial legal fees to defend the meritless Collection Suit in addition to anxiety and worry that Plaintiff suffered.

COUNT I: VIOLATIONS OF THE FDCPA

32. Plaintiff re-alleges and incorporates by reference all of the above paragraphs.

33. In its attempt to collect the alleged debt from Plaintiff, Defendant has committed violations of the FDCPA, 15 USC 1692 *et. seq.*, including, but not limited to, the following:

- a. Utilizing false, unfair, and misleading representations in connection with the collection of a debt; 15 U.S.C. § 1692d-e;
- b. Engaging in deceptive and harassing conduct in the collection of a debt, 15 U.S.C. § 1692d-f; and
- c. Using unfair and unconscionable practices to attempt to collect the debt. 15 U.S.C. §1692f.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant for:

- A. Judgment that Defendant's conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages, costs and reasonable attorney's fees pursuant to 15 USC 1692(k); and

D. For such other relief as the Court may deem just and proper.

VOYTAS & COMPANY

/s/ Richard A. Voytas, Jr.

RICHARD A. VOYTAS, JR. #52046

VOYTAS & COMPANY

1 North Taylor Avenue

St. Louis, Missouri 63108

Phone: (314) 932-1068

15SL-AC02426

In the
CIRCUIT COURT
 Of St. Louis County, Missouri



For File Stamp Only

DEBRA A. COLBERT

Plaintiff/Petitioner

January 22, 2015

Date

Case Number

vs.

LVNV FUNDING, LLC

Defendant/Respondent

Division

REQUEST FOR APPOINTMENT OF PROCESS SERVER

Comes now PLAINTIFF, pursuant
 to Local Rule 28, and at his/her/its own risk requests the appointment of the Circuit Clerk of

Name of Process Server Address Telephone

Name of Process Server Address or in the Alternative Telephone

Name of Process Server Address or in the Alternative Telephone

Natural person(s) of lawful age to serve the summons and petition in this cause on the below named parties. This appointment as special process server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVE:

Illinois Corporation Service Co.

Name

801 Adlai Stevenson Drive

Address

Springfield, IL 62703

City/State/Zip

SERVE:

Name

Address

City/State/Zip

Appointed as requested:

JOAN M. GILMER, Circuit Clerk

By

Deputy Clerk

Date

SERVE:

Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

Richard A. Voytas, Jr.

Attorney/Plaintiff/Petitioner

52046

Bar No.

1 N. Taylor Ave., St. Louis, MO 63108

Address

(314) 932-1068

Phone No.

Fax No.

15SL-AC02426

In the
CIRCUIT COURT
Of St. Louis County, Missouri



For File Stamp Only

DEBRA A. COLBERT

Plaintiff/Petitioner

January 22, 2015

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LVNV FUNDING, LLC

Defendant/Respondent

Division

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Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

Appointed as requested:

JOAN M. GILMER, Circuit ClerkBy /s/Andrea Kaid-Allen

Deputy Clerk

01-29-2015

Date

Richard A. Voytas, Jr.

Attorney/Plaintiff/Petitioner

52046

Bar No.

1 N. Taylor Ave., St. Louis, MO 63108

Address

(314) 932-1068

Phone No.

Fax No.